BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BEVERLY J. HARSTINE	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,023,008
WESLEY MEDICAL CENTER	)	
Respondent	)	
AND	)	
	)	
ZURICH AMERICAN INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the November 17, 2005, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

On January 24, 2005, claimant fell at work and fractured her right femur. In the November 17, 2005, Order, Judge Clark found that claimant sustained an accidental injury that arose out of and in the course of her employment with respondent. Accordingly, the Judge granted claimant's request for temporary total disability benefits.

Respondent and its insurance carrier contend Judge Clark erred. They argue claimant's accident did not arise out of her employment as, instead, claimant fell due to a personal risk. Consequently, respondent and its insurance carrier request the Board to deny claimant's request for workers compensation benefits.

Conversely, claimant contends the November 17, 2005, Order should be affirmed. Claimant argues she fell where the floor turned from tile to carpeting and, therefore, it could be inferred the work environment increased her risk of falling. In the alternative, claimant argues this was an unexplained fall caused by a neutral risk and, therefore, compensable under the Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant's January 24, 2005, accident arose out of claimant's employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties' arguments, the Board concludes that the preliminary hearing Order should be affirmed.

There is no question that claimant fell at work on January 24, 2005, as she was entering her office from an interior hallway. There is also no question that claimant's accident occurred in the course of her employment. The only question is whether claimant's accident "arose out of" her employment.

Although she is not certain, claimant believes the sole of her shoes may have caught on the carpeting in her office as she exited the tiled hallway. Claimant specifically denies having weakness in her legs that made her fall or having hip pain immediately before she fell. Claimant described the accident as if she tripped, causing her to lunge forward.

> As I came through the doorway I started to fall, and tried to catch myself, and I went about halfway across the room trying to get back up on my feet and couldn't, and I fell forward, I think.[1]

Respondent and its insurance carrier argue claimant must have fallen because of injuries she received in a water skiing accident she had in approximately 1983, or some 22 years ago. But claimant, who was 23 years old at that time, testified she recovered from that accident, which dislocated her right hip and fractured the acetabulum. According to claimant, after recuperating from the water skiing accident she sometimes experienced pain in her right hip but her right hip never kept her "from working or doing any normal activities."[2]

The Board agrees that claimant's accident is compensable under the Workers Compensation Act. First, the evidence tends to indicate that claimant tripped and fell as the floor coverings changed from tile to carpeting. Accordingly, if claimant tripped on the carpeting in her office the accident arose out of the conditions of claimant's work environment.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection

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[1] P.H. Trans. at 10-11.

[2] *Id.* at 15.

> between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[3]

Second, if claimant did not trip but, instead, she fell for unexplained reasons, the accident is also compensable as this Board has previously held Kansas follows the majority of jurisdictions and treats unexplained falls as neutral risks and work-related accidents.[4]

In summary, claimant has established that her January 24, 2005, accident arose out of and in the course of her employment with respondent.

WHEREFORE, the Board affirms the November 17, 2005, Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of January, 2006.

BOARD MEMBER

c: Gary E. Patterson, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[3] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[4] *Driscoll v. Cedar Vale Hospital, Inc.*, No. 214,179, 1997 WL 578257 (Kan. WCAB July 1, 1997). Also, see 1 *Larson's Workers' Compensation Law* § 7.04 (2005).